

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
AT KNOXVILLE

UNITED STATES OF AMERICA,                          )  
    )  
Plaintiff,    )  
    )  
v.    )        No. 3:08-CR-108  
    )        (PHILLIPS / SHIRLEY)  
DONALD G. FLACK,                                    )  
    )  
Defendant.    )

**MEMORANDUM AND ORDER**

All pretrial motions in this case have been referred to the undersigned pursuant to 28 U.S.C. § 636(b) for disposition or report and recommendation regarding disposition by the District Court as may be appropriate. This matter came before the Court on September 12, 2008, for a scheduled motion hearing. Assistant United States Attorney Tracee Plowell was present for the Government. Attorney Scott Green was present for the Defendant, who was also present.

Defendant has filed a Motion to Continue Trial and to Establish New Deadlines [Doc. 16] requesting continuance of the October 3, 2008 trial date. At hearing, Mr. Green proffered that he needed additional time to file a motion to suppress portions of the Government's evidence. The Defendant waived his Speedy Trial rights both at hearing and in his motion. At hearing, the Defendant stated that he had no objection to the motion and acknowledged that he would remain in custody until the new trial date. The Government had no objection to the motion.

Based upon the statements proffered at the hearing and the information contained in Defendant's motion, the Court finds good cause for granting the Defendant's motion. Accordingly, the Motion to Continue Trial and to Establish New Deadlines [Doc. 16] is **GRANTED**. The Court

finds that the ends of justice served by granting the motion outweigh the best interest of the public and the Defendant in a speedy trial. 18 U.S.C. § 3161(h)(8)(A). The Court finds that a continuance is required to allow all parties the reasonable time necessary to prepare for trial even taking into account counsels' due diligence. See 18 U.S.C. § 3161(h)(8)(B)(ii).

In light of these findings and its granting of the motion, the Court set a new trial date of December 16, 2008. The Court further finds that the period of time between September 12, 2008, and the new trial date of December 16, 2008, shall be fully excludable as provided by the Speedy Trial Act. 18 U.S.C. § 3161(h)(8)(A)-(B). The Defendant shall have until October 10, 2008 to file motions, and upon Defendant filing any motions, the Government will have seven days to respond.

Accordingly, it is **ORDERED**:

- (1) The oral motion to continue the trial is **GRANTED**;
- (2) The Defendant is given until **October 10, 2008** to file motions;
- (3) The Government will have **seven days** to respond to the Defendant's motions;
- (4) The trial is reset to commence before the Honorable Thomas Phillips, United States District Judge on **December 16, 2008**; and
- (5) All time between **September 12, 2008** and the new trial date of **December 16, 2008**, is fully excludable time under the Speedy Trial Act for the reasons set forth above.

**IT IS SO ORDERED**

**ENTER:**

s/C. Clifford Shirley  
United States Magistrate Judge